

RICHLAND COUNTY WATER RESOURCE DISTRICT  
Richland County Courthouse, Wahpeton, ND  
July 25, 2017

The Richland County Water Resource Board (RCWRB) met July 25, 2017 at 8:00 AM at the Richland County Courthouse, Wahpeton, North Dakota.

THOSE PRESENT: Managers Arv Burvee, Gary Friskop, James Haugen, Robert Rostad, and Don Moffet, Engineering Technician Justin Johnson, and Secretary-Treasurer Monica Zentgraf.

THOSE ABSENT: None

### **Minutes**

The July 11, 2017 minutes were presented and discussion was held relative to the application for State Surface Drain No. 4874 for MC LLLP (Steven Mauch). Concern was expressed about the 10 foot maximum depth of cut in the township road ditch. A conference call was held with Mr. Mauch for clarification. Mr. Mauch explained that the surface drain application was for an "after the fact" permit and the ditch work was already done. He assured the Managers the ditch will not be any deeper than it is at this time. Upon conclusion of the conference call, a motion was made by Mgr. Burvee and seconded by Mgr. Haugen to approve the July 11, 2017 minutes as presented. The motion carried unanimously.

### **Financial Matters**

●Proj #2 Reconstruction/Extension- Pay Estimate #5, to Riley Bros Construction, was presented to the Board. The pay estimate, in the amount of \$37,035.18 represents final payment for the reconstruction/extension project. It was noted that liquidated damages totaled \$52,500; however, \$30,000 was forgiven, per guidance to the Engineer at the RCWRB meeting held June 13, 2017. It was further noted that the contractor had not yet returned the final pay estimate to the RCWRD and if approved today, the final payment would be held until the signed document was received in the District's Office.

Engineer Mike Bassingthwaite joined the meeting.

Mr. Bassingthwaite reported the contractor is now disputing the amount of liquidated damages despite their earlier verbal agreement. The contractor will not sign the final pay estimate and has requested a meeting with the Managers to discuss this matter. Action on the final pay estimate was tabled pending a meeting with the contractor at a later date. (RCWRD #10-079)

●Proj #14 Reconstruction- Pay Estimate #2, to JAV Construction, was presented to the Board. The pay estimate of \$201,575.25 represents 92% completion of the reconstruction project. A motion was made by Mgr. Haugen and seconded by Mgr. Burvee to approve Pay Estimate #2 as presented. The motion carried unanimously. (RCWRD #11-001)

The Managers tabled consideration of other financial matters for the purpose of discussing the following drain projects with Mr. Bassingthwaite:

### **Proj #2 Reconstruction/Extension**

Mr. Bassingthwaite intended to have the contractor repair a damaged field inlet culvert and install a new flap gate on the pipe located in the NW1/4 Section 28, Colfax East, before leaving the site. The contractor moved out before being informed of the repaired. Due to the minimal work involved, consensus was to assign the work to a local contractor. Appl #17-044 was completed and a motion was made by Mgr. Burvee and seconded by Mgr. Rostad authorizing JBX to repair the culvert and install a new flap gate at Proj #2 expense. Project completion date set for October 2, 2017. The motion carried unanimously. (RCWRD #10-079)

### **Proj #5(27) Reconstruction**

The Board previously entered into an agreement with Larry Bakko for purchase and removal of some of the excess spoil material for Mr. Bakko's personal use. The excess

material is located in the NW1/4 NE1/4 Section 21, Walcott East. Additionally, Mr. Bassingthwaite previously had discussion with the Managers about allowing Northern Improvement to purchase some of the remaining excess material at the same location. Direction given by the Board at that time was to allow Northern Improvement to purchase excess material at a rate of \$1.00/CY as certified by the North Dakota Department of Transportation. Mr. Bassingthwaite reported that Northern Improvement has removed approximately 5,000 CYs from the site. As a part of their removal process Northern Improvement pushed the spoil into piles. The tenant of the land, Larry Johnson, recently notified Mr. Bassingthwaite that he did not want any additional material, other than the spoil pushed into piles by Northern Improvement, removed from the site and so Northern Improvement was stopped. It was felt that Mr. Bakko was entitled to additional material since the first agreement entered into was with him and he was allowed to take spoil from Northern Improvement's piles (as he was not able to acquire spoil with his own equipment due to the heavily compacted state of the material.) Northern Improvement's Management has notified Mr. Bassingthwaite that their cost for pushing the material into piles was \$5,000 and therefore they feel they do not owe the District any money since the cost of the material they removed was also \$5,000. Consensus of the Managers was for Mr. Bassingthwaite to negotiate with North Improvement on the cost of the material they removed. The Managers felt he should reduce the cost of the material to \$0.50/CY. It was also noted that Mr. Bassingthwaite needs to work with Northern Improvement to restore their haul road.

The next issue discussed was two large dips (over culverts) in the township road on the north side of Section 20, Walcott East. Mr. Bassingthwaite indicated the culvert installations were not quality work; however, Mr. Bakko's trucks hauling the excess spoil out further deteriorated the road. Mr. Bassingthwaite was directed to ask Mr. Bakko to strip the gravel off over the culverts, place clay in the area of the dips, and put the gravel back on top. It was noted that the Walcott Township Board of Supervisors were requested to blade the road last week also. (RCWRD #14-124)

#### **Proj #14 Reconstruction**

Mr. Bassingthwaite received a telephone call from Randy Thompson, who claims their land will be flooded as a result of the recent reconstruction of Proj #14. He requested culverts be installed in the open field ditches in the SWCR Section 27 and SECR Section 28, Viking Township. Mr. Bassingthwaite indicated that he did not agree with Mr. Thompson's concern of flooding but felt culverts and flap gates should be installed in the open ditches. A motion was made by Mgr. Haugen and seconded by Mgr. Burvee authorizing JAV Construction to install 18 inch culverts and flap gates in the two open field ditches in the SWCR Section 27 and SECR Section 28, Viking Township. The motion carried unanimously. (RCWRD #11-001)

Mr. Bassingthwaite left the meeting.

#### **Financial Matters-Continued**

●Vouchers- Vouchers for the month of July 2017 were presented for the Board's review and approval. A motion was made by Mgr. Moffet and seconded by Mgr. Burvee to approve Vouchers #17544 through #17564, Vouchers #17566 through #17573 and the electronic funds transfer for the IRS payment. The motion carried unanimously. (Check #17565 to Riley Bros Construction was not approved per discussion earlier in the meeting.)

#### **Mail**

- 1.) Richland County Commission- Minutes of the June 2017 meetings.
- 2.) North Dakota State Water Commission- Minutes of the March 29, 2017 meeting.
- 3.) North Dakota State Engineer- "*The Current*" newsletter.
- 4.) North Dakota Insurance Reserve Fund- Notice of probable rate increase of 10% to 15% in 2018 due to unprecedented claim loss experience in 2015 and 2016.
- 5.) Mooreton Township Zoning Commission- Notice of public hearing scheduled for July 27, 2017 on petition submitted by Southeast Water Users for a conditional use permit to install a water distribution pipeline in Sections 11, 12, and 24, Mooreton Township. It was noted that the pipeline will be installed adjacent to Legal Drain #41 in Section 24, Mooreton Township. Mgr. Friskop will attend the

hearing and provide comments regarding the RCWRD's requirement for submission of an application for a Utility Permit for work adjacent to the legal drain.

- 6.) Mooreton Township Zoning Commission- Notice of public hearing scheduled for July 27, 2017 on petition submitted by Eric Birchem for a conditional use permit to expand a small animal feeding operation on the northeast 19.2 acres of the SE1/4 Section 24, Mooreton Township.
- 7.) Attorney David Bliss- Copy of State Engineer Garland Erbele's ORDER, dated July 21, 2017, "that the recommended finds of fact and conclusions of law of the Administrative Law Judge are adopted as the findings of fact and conclusions of law of the State Engineer in its matter. It was "FURTHER ORDERED that the recommended order of the Administrative Law Judge is adopted as the final order of the State Engineer in this matter, the motion by the State Engineer for Summary Judgement is **GRANTED** and the Motion to Stay Proceedings by the Richland County Resource District is **DENIED.**" (RE: The District's appeal of the State Engineer's permitting of the Fargo-Moorhead Flood Diversion Inlet Structure.)

### **Recess for Hearing and Executive Session regarding Fargo-Moorhead Flood Diversion Matters**

The Managers recessed at 9:45 A.M. in order to attend the hearing on the District's Motion to Intervene scheduled for 10:00 A.M. and to hold an Executive Session at the conclusion of the hearing.

### **Reconvened**

The Managers reconvened at 12:20 P.M. and Chr. Friskop provided the following report on the Hearing and Executive Session:

On the RCWRD's Motion to Intervene in the matter of the "Cass County Joint Water Resource District vs. Matthew Miranowski, et al", Judge Blumer denied the District's request to intervene and the Richland-Wilkin Joint Powers Authority's motion to file an amicus brief in support of the RCWRD. Chr. Friskop further reported that in Executive Session the Managers and Legal Counsel discussed Judge Blumer's ruling, the Administrative Law Judge's recommendation to deny the RCWRD's appeal of the State Engineer's decision to grant the Diversion Authority a permit to proceed on the FM flood diversion project, and the pending decision of Judge Tunheim. No action was taken by the Board.

### **Drain Tile Permit Fees**

The Managers discussed the need for a policy regarding drain tile permit fees. The following resolution was offered and acted upon:

## **RICHLAND COUNTY WATER RESOURCE DISTRICT RESOLUTION OF POLICY REGARDING DRAIN TILE PERMIT FEES**

WHEREAS, the Richland County Water Resource District (the "District") is a North Dakota water resource district and political subdivision under N.D. Cent. Code Chapter 61-16.1.

WHEREAS, in accordance with Section 61-32-03.1 of the North Dakota Century Code, the District must consider, investigate, process, and approve or deny each drain tile application submitted to the District, also known as an "APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM" under Section 61-32-03.1.

WHEREAS, all tile permit applications require the District to conduct certain investigations and reviews before the District can make a final decision on a permit application, including determinations of land ownership, issuance of thirty-day notices, review of "technical evidence" submitted by downstream parties, and other items, all in accordance with Section 61-32-03.1.

WHEREAS, the tile application review criteria are technical and legal in nature, and require compliance with specific legal procedures that typically require the District to confer with engineering and legal consultants to ensure proper review and consideration.

WHEREAS, the District's general fund budget is comprised of those dollars generated by a maximum mill levy, as limited by applicable North Dakota law, and the District must utilize its general fund to finance and fund all of its operations, with the exception of assessment projects.

WHEREAS, the District must pay for the costs required to properly consider, investigate, and process all surface and subsurface drainage permit applications with the District's limited general fund dollars, and utilizing general fund dollars for processing permits severely limits the District's ability to construct, operate, maintain, and improve other projects and water infrastructure that could benefit all residents of Richland County.

WHEREAS, in light of the financial burden on the District's general fund as a result of the District's obligation to consider, investigate, and process all drain tile permit applications in Richland County in accordance with North Dakota law, the District has concluded adoption of a formal policy regarding the expenses associated with all drain tile applications is necessary.

WHEREAS, during the 2017 Legislative Session, the North Dakota Legislature enacted HB 1390 to amend Section 61-32-03.1; one of the provisions of HB 1390 limits tile permit fees to a maximum of \$150 per application.

NOW THEREFORE, BE IT RESOLVED that this RESOLUTION OF POLICY represents the District's official policy regarding tile permit application fees for purposes of considering, investigating, and processing all drain tile permit applications submitted to the District under Section 61-32-03.1.

BE IT FURTHER RESOLVED that the District will comply with its obligations to properly consider, investigate, and process all drain tile permit applications in accordance with Section 61-32-03.1 of the North Dakota Century Code to ensure orderly and legal tile drainage in Richland County.

BE IT FURTHER RESOLVED that, in an effort to maintain sufficient dollars in its general fund to construct, operate, maintain, and improve other projects and water infrastructure for the benefit of all residents of Richland County, implementation and administration of a drain tile permit fee policy is necessary.

BE IT FURTHER RESOLVED that, from the date of the District's approval of this RESOLUTION, the District's permit fee for each APPLICATION TO INSTALL A SUBSURFACE WATER MANAGEMENT SYSTEM is \$150 per application, due at the time the District receives the application.

BE IT FURTHER RESOLVED that this RESOLUTION OF POLICY supersedes any of the District's previous policies or practices regarding tile permit fees.

Date Approved: July 25, 2017

RICHLAND COUNTY WATER  
RESOURCE DISTRICT

*Gary Friskop*  
Gary Friskop, Chairman

ATTEST:

*Monica Zentgraf*  
Monica Zentgraf  
Secretary-Treasurer

### **Drain Tile Procedures**

Discussion was held relative to drain tile procedures under the 2017 drain tile law and revised state forms. Consensus of the Managers was to post notice on the District's website when drain tile pumps must be shut off due to critical flooding conditions. Office

Staff will confer with North Dakota State Water Commission Staff Members regarding possible revisions to the new forms.

### **2018 Budget**

Various budget issues were discussed. Intentions are to present the final budget to the Managers at the August 1, 2017 Board Meeting.

### **Applications**

Appl #17-045, Cornie Intveld: S1/2NE1/4 Section 18, Waldo Township The RCWRB acknowledged the notification of Mr. Intveld's intention to install 79 acres of drain tile in the S1/2NE1/4 Section 18, Waldo Township. No State Subsurface Drain Tile Permit is required as the project involves less than 80 acres.

Appl #17-046, Bruce & Ryan Miller: S1/2NE1/4 Section 7, Summit West The RCWRB acknowledged the notification of Bruce and Ryan Miller's intent to install 71 acres of drain tile in the S1/2NE1/4 Section 7, Summit West. No State Subsurface Drain Tile Permit is required as the project is less than 80 acres.

### **Appl #17-047, Darin Prochnow, Carrol and Barbara Kratcha: E1/2 Section 6, Devillo Township**

The Board reviewed *Application to Install a Subsurface Drain #17-047* dated June 29, 2017 for Darin Prochnow and Carrol and Barbara Kratcha. Under the application, Applicants seek to install a subsurface water management system ("drain tile system") in the East ½ Section 6, Devillo Township, Richland County, North Dakota. The project will include one pump outlet located in the NECR of the NE1/4 Section 6, discharging directly into the south township road ditch along 90<sup>th</sup> Street Southeast. The water will then flow east into the County Road #81 west ditch and flow north through one 42 inch CMPA. The water will continue north in the County Road #81 west ditch, on the east side of Section 31, Summit Township.

Because the project will discharge directly into a township road ditch, a THIRTY-DAY NOTICE was necessary to downstream landowners under N.D. Century Code § 61-32-03.1 unless Applicants submitted NOTARIZED LETTERS OF APPROVAL from all downstream landowners. The District did not provide a THIRTY-DAY NOTICE to the landowners within one mile of the outlet of the proposed project, as Applicants submitted NOTARIZED LETTERS OF APPROVAL from all landowners within one mile of the outlet of the proposed project. Under the tile law passed during the 2017 Legislative session, the Board can attach conditions to protect the highway ditch.

According to records on file with the Richland County Recorder's Office, D & D Prochnow, LLLP owns Tract Two in the NE1/4 Section 6 and Tract Three in the SE1/4 of Section 6; James Kath owns a 35 acre tract in the E1/2 of the SE1/4 of Section 6; and Carrol and Barbara Kratcha own the north 82 acres of the NE1/4 of Section 6, all in Devillo Township, where Applicants intend to install the tile system.

A motion was made by Mgr. Burvee and seconded by Mgr. Moffet to approve *Application to Install a Subsurface Drain #17-047* dated June 29, 2017, for Darin Prochnow and Carrol and Barbara Kratcha in the E1/2 of Section 6, Devillo Township, subject to the following conditions:

- 1) That Applicants notify the Richland County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 2) That Applicants provide, install, and maintain adequate erosion protection satisfactory to Devillo and Summit Township Boards of Township Supervisors at any and all outlets into Devillo and Summit Townships road right of way;
- 3) That Applicants reseed any of the Townships right of way disturbed by Applicants activities, and maintain any reseeded areas for a period of one year from the date of completion to ensure the seeding adequately repairs any disturbed areas.

- 4) That Applicants turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the District.
- 5) That all work be done in a neat and professional manner;

The motion carried unanimously.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicants permit. However, for Applicants protection, and to ensure protection of Applicants tile system, the District will recommend that Applicants consider complying with the following:

- 1) That Applicants notify the Richland County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submit an additional permit application;
- 2) That Applicants obtain and record with the Richland County Deeds Office, an easement or written agreement between all landowners who are a party to the tile project (as may be recommended by an attorney).
- 3) That Applicants obtain written permission from the Devillo and Summit Township Boards of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches; to install, operate, and maintain buried pipe in any of its township road ditches; or to bore through its township road;
- 4) That Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

#### **Adjournment**

There being no further business to come before the Board, Chr. Friskop adjourned the meeting at 1:45 P.M.

Respectfully submitted,  
*Monica Zentgraf*  
Secretary

*Gary Friskop*  
Chairman of the Board